

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

AF HOLDINGS LLC,

Plaintiff,

v.

JOHN DOE,

Defendant.

CASE NO. 12-cv-1449 (JNE/FLN)

Judge: Hon. Joan N. Ericksen

Magistrate Judge: Hon. Franklin L. Noel

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR LEAVE TO AMEND THE COMPLAINT**

Plaintiff AF Holdings LLC hereby moves this Court for leave, pursuant to Federal Rule of Civil Procedure 15, to amend the Complaint to name “Roeum Hean” as the Defendant in this case. Plaintiff has ascertained Mr. Hean’s identity through the discovery previously granted by this Court and now seeks leave to name Mr. Hean as the Defendant in this action.

FACTUAL BACKGROUND

On June 15, 2012 Plaintiff brought this action for copyright infringement, contributory infringement and negligence against an unknown Defendant. (ECF No. 1.) In order to identify the unknown Defendant, Plaintiff sought leave to issue a subpoena on the Defendant’s Internet Service Provider (“ISP”) to obtain his identifying information. (ECF No. 3.) On August 3, 2012, the Court granted Plaintiff’s discovery motion. (ECF No. 9.) Pursuant to the Court’s order, Plaintiff issued a subpoena on Defendant’s ISP.

The Defendant's ISP responded to Plaintiff's subpoena and identified "Roeum Hean" as the individual associated with one of the Internet Protocol ("IP") addresses over which Plaintiff observed infringing activity. Plaintiff now seeks leave from the Court to amend the Complaint in this case, and name and serve Mr. Hean as the Defendant in this case.

STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). However, "the court should freely give leave when justice so requires." *Id.*; *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (Rule 15(a) mandates that leave to amend be freely given when justice requires, giving plaintiff an opportunity to test claims on the merits). Under this policy, only limited circumstances justify a district court's refusal to grant leave to amend pleadings: undue delay, bad faith on the part of the moving party, futility of the amendment or unfair prejudice to the opposing party. *Id.* The Eighth Circuit has held that delay alone is not reason in and of itself to deny leave to amend. *Buder v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 644 F.2d 690, 694 (8th Cir.1981). The delay must have resulted in unfair prejudice to the party opposing amendment. *Mercantile Trust Co. National Ass'n v. Inland Marine Products Corp.*, 542 F.2d 1010, 1012 (8th Cir.1976). Although the grant or denial of leave to amend is committed to a district court's discretion, it is an abuse of discretion to deny leave to amend unless there is sufficient reason, such as "undue delay, bad faith or dilatory motive ... repeated failure

to cure deficiencies by [previous] amendments ... [or] futility of amendment.” *Foman*, 371 U.S. at 182.

DISCUSSION

Under the Federal Rules, “[t]he court should freely give leave [to amend pleading] when justice so requires.” Fed. R. Civ. P. 15(a)(2). Justice so requires here, because without a named Defendant in this case, Plaintiff’s claims for copyright infringement, contributory infringement, and negligence cannot proceed. Courts liberally allow amendment to allow the case to progress. *Foman*, 371 U.S. at 182 (“If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.”) The Court should therefore grant Plaintiff leave to amend the Complaint and name and serve Mr. Hean as a Defendant in this case.

CONCLUSION

The Court should grant Plaintiff leave to amend the Complaint to name “Roeum Hean” as the Defendant in this case because “justice so requires.”

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Respectfully submitted,

AF Holdings LLC

DATED: October 26, 2012

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